

Notice of Adoption

Homeland Security and Emergency Services, Division of
(SUBMITTING AGENCY)

- ☒ This adoption will amend the NYCRR.
☐ This adoption will not amend the NYCRR.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice. change in text

1. *Action taken:*

Addition of Part 227 of Title 9 NYCRR and Amendment of Part 426.9(h) of Title 19 NYCRR.

- ☐ "X" box if the rule was originally proposed as a consensus rule making.

2. *Effective date of rule:*

- ☒ Date this notice is published in the *State Register*.
☐ This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:
☐ Date of filing.
☐ Other date (*specify*): _____
☐ Other date (*specify*): _____
☐ _____ days after filing.

3. *Statutory authority under which the rule was adopted:*

Executive Law § 158, Civil Service Law § 58-a and General Municipal Law § 204-dd.

4. *Subject of the rule:*

Minimum qualifications for certain fire chiefs.

5. *Purpose of the rule:*

Establish minimum qualifications for fire chiefs subject to Civil Service Law § 58-a and General Municipal Law § 204-dd.

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed** or **emergency/proposed** rule making: HES-08-21-00007 - P

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

☐ No changes were made to the proposed rule.

● *Text/Summary does not need to be republished in the State Register. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C (if applicable), and D, as well as remaining Items 7-8 and 13-14.*

☒ Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:Part 227.2Part 227.3(a)

● *Text/Summary is required to be republished in the State Register. Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.*

☒ Text attached.☐ Summary attached.

☐ This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:Publication date: 02/24/2021, I.D. No. HES-08-21-00007 - P

Publication date: _____, I.D. No. _____

D. Signed certification of adoption and full text of the rule are attached:

☒ Signed certification of adoption (scanned pdf).☐ Full text of the rule (MS Word).

7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Kenneth Bruno, Deputy CounselAgency name NYS Division of Homeland Security and Emergency ServicesOffice address 1220 Washington Avenue, Building 7AAlbany, New York 12226Telephone (518) 242-5000E-mail: Kenneth.Bruno@dhses.ny.gov

8. Additional matter required by statute:

☐ Yes (include below material required by statute).☒ No additional material required by statute.9. **Revised Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

☒ The full text of the Revised RIS.☐ A summary of the Revised RIS.B. A **statement is attached** explaining why a revised RIS is not required (check one box):☐ Changes made to the last published rule do not necessitate revision to the previously published RIS.☐ This is a technical amendment exempt from SAPA §202-a.

C. ☐ A revised RIS is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

☐ A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

☒ The full text of the Revised RFA.

☐ A summary of the Revised RFA.

B. A **statement is attached** explaining why a revised RFA is not required (check one box):

☐ Changes made to the last published rule do not necessitate revision to the previously published RFA.

☐ The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. ☐ A revised RFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

☐ A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. Revised Rural Area Flexibility Analysis (RAFA)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

☒ The full text of the Revised RAFA.

☐ A summary of the Revised RAFA.

B. A **statement is attached** explaining why a revised RAFA is not required (check one box):

☐ Changes made to the last published rule do not necessitate revision to the previously published RAFA.

☐ The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency's findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. ☐ A revised RAFA is **not** attached because this rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

☐ A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. Revised Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

☐ The full text of the Revised JIS.

☒ A summary of the Revised JIS.

B. A **statement is attached** explaining why a revised JIS is not required (check one box):

☐ Changes made to the last published rule do not necessitate revision to the previously published JIS.

☐ The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency's findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is **not** attached because:

☐ This rule is a "rate making" as defined in SAPA §102(2)(a)(ii).

☐ This rule was proposed by the State Comptroller or Attorney General.

13. Assessment of Public Comment (includes legislative comments)

(COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- ☒ Attached is an assessment of public comment.
 No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- ☐ An assessment is not attached because no comments were received.
- ☐ An assessment is not required because this action is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. Referenced material (check one box):

- ☐ No information is being incorporated by reference in this rule.
- ☒ This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

Part 426 _____

15. Initial Review of Rule (SAPA §207)

(SELECT AND COMPLETE ONE)

- A. ☐ As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year _____ which is no later than the 3rd year after the year in which this rule is being adopted.
- B. ☒ As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2026, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
- ☐ Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period;
 or
- ☒ An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C. ☐ As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year _____ which is no later than the 5th year after the year in which this rule is being adopted.
- D. ☐ Not Applicable. This is a "rate making" or a "consensus rule," or a repeal of a rule.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Kenneth Bruno, Deputy Counsel

Signature



Address 1220 Washington Avenue, Building 7A

Telephone (518) 242-5000

E-mail Kenneth.Bruno@dhses.ny.gov

Date 05/13/2021

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.



Homeland Security and Emergency Services

ANDREW M. CUOMO
Governor

PATRICK A. MURPHY
Commissioner

CERTIFICATION

I, Patrick A. Murphy, Commissioner of the Division of Homeland Security and Emergency Services, hereby certify that Part 227 of Title 9 and Part 426.9(h) of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York was filed on February 9, 2021 and published in the *State Register* on February 24, 2021 under ID No. HES-08-21-00007 pursuant to the authority granted by Executive Law §158, Civil Service Law §58-a and General Municipal Law §204-dd.

This current rule is hereby adopted and effective upon publication in the *State Register* on a permanent basis pursuant to Executive Law §158, Civil Service Law §58-a, General Municipal Law §204-dd and the State Administrative Procedure Act.

Patrick A. Murphy
Commissioner
May 12, 2021

19 NYCRR Part 426.9(h) is amended to read as follows:

(h) For Supervisory Level V (chief of department level responsibilities) [under development.] a person shall:

1. possess Fire Officer 3 certification, pursuant to National Fire Protection Association (NFPA) 1021 Standard for Fire Officer Professional Qualifications, 2014 Edition, or possess the training, education, experience, or combination thereof, determined by the State Fire Administrator to meet the requirements of Civil Service Law section 58-a; and
2. meet the minimum qualifications established by the local civil service agency having jurisdiction; and
3. meet the core competencies for incident commander established by the State Fire Administrator, pursuant to General Municipal Law section 204-dd and 9 NYCRR Part 227.

A new Part 227 is added to title 9 of the New York Code of Rules and Regulations to read as follows:

Qualifications of a Fire Chief.

227.1. Authority, intent and purpose.

- (a) Statutory authority: General Municipal Law Section 204-dd;
- (b) The intent and purpose of this part is to establish minimum qualifications for a fire chief in any fire department or fire company that employs six (6) or more paid fire fighters in the State of New York.

227.2 Definitions

- (a) The term “fire chief” means the person who is head of the department or any title or rank that includes the duties of fire chief in any fire department or fire company with six (6) or more paid fire fighters.

- (b) The term “fire fighter” means a member of a fire department whose duties include fire service as the phrase fire service is defined in paragraph d of subdivision eleven of section three hundred two of the retirement and social security law.

227.3 Qualifications of a fire chief.

- (a) To eligible for appointment or election as a fire chief the person must meet the core competencies for incident commander established by the State Fire Administrator.
- (b) The Office of Fire Prevention and Control shall post and keep current the core competencies for incident commander on its official website.

Regulatory Impact Statement

1. Statutory authority:

Civil Service Section 58-a, Executive Law Sections 158 and 159-d and General Municipal Law Sections 204-dd, authorize the New York State Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control (OFPC), to adopt the rules and regulations to establish minimum requirements for education, health and safety for paid fire chiefs. In addition, General Municipal Law Section 204-dd requires that all fire chiefs in departments with six (6) or more paid (civil service) firefighters (also commonly known as combination fire departments) in New York State, meet the training standards for incident commanders as established by the most recently adopted recommended best practices for fire training programs by the Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control.

2. Legislative objectives:

The legislative objectives of Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019 are to establish basic, educational, health and physical fitness training standards for career (civil service) fire chiefs (outside New York City) and fire chiefs in a department with six or more paid (civil service) firefighters in New York State.

3. Needs and benefits:

Prior to Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019, New York State did not have minimum training qualification for fire chiefs. This potential lack of training and/or understanding of fire situations could seriously jeopardize the safety of the public and the brave firefighters on the scene of a fire under the direction of the chief. These required standards ensure eligible individuals have learned the necessary strategic and tactical skills to lead the fire department. The addition of 9 NYCRR Part 227 and amendment to 19 NYCRR Section 426.9(h) are necessary to implement the statutory changes relating to minimum training and qualifications for paid (civil service) fire chiefs and fire chiefs

in combination fire departments. No scientific or statistical study, report, or analysis served as a basis for the proposed rule.

4. Costs:

Costs to fire districts, departments, and companies will directly correlate to any training needed for an individual to be eligible for appointment or election to fire chief in order to meet the job responsibility requirements. All necessary fire chief training can be conducted at the fire department, at the State Academy of Fire Science and at other locations regionally around the state. The costs to municipalities, fire department and fire districts will be nominal and may include paid time for the individual to attend the training and other minor training expenses.

5. Local government mandates:

This rule will impose new minimum requirements for education, health and safety for fire chiefs of department with six or more paid firefighters. It is not anticipated that the rule will impact localities in any significant manner. Since Chapter 406 of the Laws of 2018 was effective in January 2019, it only applied to fire chiefs appointed on or after that date. Therefore, the law only impacts a small number of jurisdictions in the State. At the time of these proposed rules, there has been almost two years for candidates for fire chief of a career fire department to obtain the training necessary to meet the minimum qualifications for fire chief as required by the regulations.

6. Paperwork:

The proposed rule would not require municipalities to complete any additional paperwork or maintain additional documentation.

7. Duplication:

There are no rules or other legal requirements of either the State or federal government which duplicate, overlap, or conflict with the proposed rule.

8. Alternatives:

The provisions of the proposed rule implement statutory mandates of Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019. There were no significant alternatives considered.

9. Federal standards:

No standards have been set by the federal government for the same or similar subject areas.

10. Compliance schedule:

Chapter 406 of the Laws of 2018 was enacted on December 21, 2018 and effective on January 20, 2019 and subsequently amended by Chapter 678 of the Laws of 2019 which was enacted on December 16, 2019 and became effective June 13, 2020. As of January 20, 2019, to be eligible for appointment to fire chief of a career fire department subject to Civil Service Law Section 58-a, individuals must possess Fire Officer III certification pursuant to the National Fire Protection Association's Standard 1021 for Fire Officer Professional Qualifications or possess the training, education, experience or a combination thereof as determined by the State Fire Administrator. Guidance regarding fire officer training, education and experience will be posted on OFPC's official website at: WWW.DHSES.NY.GOV/OFPC. In addition, as of June 13, 2020, to be eligible for appointment or election as a fire chief in departments that employ six (6) or more paid firefighters, (e.g. career fire departments or combination fire departments), individuals must meet the current core competencies for incident commander established by the Office of Fire Prevention and Control. These core competencies will be posted and maintained on OFPC's official website at: WWW.DHSES.NY.GOV/OFPC. These core competencies are derived from the most recently developed "Recommended Best Practices for Fire Department Training Programs" Bulletin which is currently posted on OFPC's official website.

Regulatory Flexibility Analysis for Small Business and Local Governments

1. Effect of rule:

(Describe the types of small businesses and local governments and provide an estimate of the number of each such small business or local government that will be affected by the rule.)

Fire departments in cities, towns, villages or fire districts that employ a paid (civil service) fire chief or any fire department that employs six (6) or more paid fire fighters (civil service) are considered local governments affected by the proposed rule.

2. Compliance requirements:

(Describe the reporting, recordkeeping or other affirmative acts that a small business or local government will have to undertake to comply with the rule.)

It is not anticipated that small businesses or local governments will not have to perform any new reporting, record keeping or other affirmative acts in order to comply with the rule.

3. Professional services:

(Describe the types of professional services that a small business or local government is likely to need to comply with the rule.)

None known.

4. Compliance costs:

(Estimate the initial capital costs that will be incurred by a regulated business or industry or local government to comply with the rule; estimate the annual cost for continuing compliance with the rule; and indicate whether or not the initial or continuing compliance costs will vary for small businesses or local governments depending on the type and/or size of such business or local government.)

It is not anticipated that fire districts, departments, and companies will incur significant costs as a result of the regulations. Any costs incurred will relate to minimal training expenses which may include time paid to individuals who need additional training. Any training costs incurred by individuals is minimal. Depending on the training, it can be taught in-house, by state certified instructors at the fire department or by state fire instructors at low to no cost at the NYS Academy of Fire Science or regionally at local fire departments or training academies.

5. Economic and technological feasibility:

(Provide an assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments.)

It is not anticipated that the proposed rule will have any significant financial impact on small businesses and local governments. It is not anticipated that the rule will impose any technological burdens on local governments.

6. Minimizing adverse impact:

(Explain how the rule is designed to minimize any adverse economic impact the rule may have on small businesses or local governments. In this respect, an agency should consider the approaches suggested by the Legislature in SAPA §202-b (1). If the rule could not be designed to minimize the adverse economic impact on small businesses or local governments, explain why. If the rule will have no adverse economic impact on small businesses or local governments, explain the reasons for that finding. In addition, this section must contain a statement indicating whether the approaches for minimizing adverse economic impact suggested in SAPA §202-b (1) or other similar approaches were considered.)

The purpose of the proposed rule is to ensure that paid fire chiefs (civil service) and fire chiefs of departments which employ six (6) or more paid (civil service) firefighters in New York State meet minimum qualifications related to education, health and physical fitness as well as nationally recognized fire officer professional qualifications. The intent is to provide the rules and regulations reasonably necessary to establish those minimum qualifications statewide. As such, the proposed rule does not distinguish between small or large businesses or local governments which may be affected by this rule. Therefore, the approaches for minimizing adverse economic impact on small businesses or local governments suggested by section 202-b (1) of SAPA were not considered in the development of this rule. In addition, statewide fire service associations and municipal associations which represent rural areas statewide have had the opportunity to advise and provide guidance regarding the rule.

7. Small business and local government participation:

(Explain how your agency complied with SAPA §202-b(6), which requires that agencies ensure that small businesses and local governments have an opportunity to participate in the rule making process.)

Both small businesses and local governments will have an opportunity to participate in the rule making process by means of submissions during the public comment period according to SAPA guidelines.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are approximately 105 career and combination fire departments and companies in New York State. Career fire chiefs subject to Civil Service Law Section 58-a, except those in New York City, and fire chiefs in New York State of fire departments or companies that employ six (6) or more paid firefighters (civil service) will be subject to the rule, including those departments in rural areas.

2. Reporting, recordkeeping, and other compliance requirements; and professional services:

The proposed rule would not require fire districts, departments, or companies to report or submit any new forms to the New York State Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control. It is not anticipated that fire districts, departments, and companies in rural areas will need to engage professional services in order to comply with the proposed rule.

3. Costs:

Costs to fire departments and companies will be nominal given that all necessary training is available and provided by the State at low to no cost. The costs incurred may include time paid to individuals to attend the training and other minimal training expenses.

4. Minimizing adverse impact:

The purpose of the proposed rule is to provide the training standards and minimum qualifications reasonably necessary to implement the provisions of Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019. The rules do not distinguish between rural areas and non-rural areas of New York State. The proposed rules are not expected to have any substantial adverse impact on rural areas and therefore no other approaches or exemptions were considered to minimize impact in such areas.

5. Rural area participation:

Public and private interests in rural areas will have an opportunity to participate in the rule making process by means of submissions during the public comment period according to SAPA guidelines. In addition, the statewide fire service associations and municipal associations which represent rural areas statewide have had the opportunity to advise and provide guidance regarding the rule. OFPC will have a designated point of contact to assist the various New York State fire services including those in rural areas with the complexities of implementation and requirements established by the rule.

Statement Regarding A Job Impact Statement

A Job Impact Statement is not required as the Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control finds that the rule will not have a substantial adverse impact on jobs or employment opportunities. The nature and purpose of the rule is to implement the provisions of Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019 statewide to establish minimum qualification for fire chiefs subject to the New York State Civil Service Law Section 58-a and General Municipal Law Section 204-dd.



Homeland Security and Emergency Services

ANDREW M. CUOMO
Governor

PATRICK A. MURPHY
Commissioner

ASSESSMENT OF PUBLIC COMMENT

9 New York Codes, Rules and Regulations Part 227 and 19 New York Codes, Rules and Regulations Part 426.9(h)

This assessment responds to the comments received on the draft regulations for Part 227 of Title 9 and Part 426.9(h) of Title 19 of the New York Codes, Rules and Regulations (NYCRR) which were published in the State Register on February 24, 2021.

On February 9, 2021, the Office of Fire Prevention and Control, (OFPC) proposed and published for public comment draft regulations relating to the minimum qualification for fire chiefs pursuant to Chapter 406 of the Laws of 2018 and Chapter 678 of the Laws of 2019. No public hearings were conducted related to the regulations. The Public Comment period ended on April 12, 2021.

In total OFPC received three (3) comments on the regulations via email and U.S Mail.

OFPC processed these comments and all comments received equal consideration. The comments received were from the Brighton Fire District located in Rochester, New York, the Brighton Professional Firefighters Association, Local 2223 located in Rochester, New York and the New York State Professional Fire Fighters Association, Inc. located in Albany, New York.

Comment 1. Brighton Fire District
3100 East Avenue
Rochester, New York 14610-3522

Summary – The Brighton Fire District comments that Fire Officer I certification should be the minimum training requirement for a fire chief of a fire department the employs six (6) or more paid (civil service) firefighters and seeks clarification in the regulations to indicate that OFPC's most recently published best practices for incident commanders is the sole minimum requirement for fire chiefs subject to General Municipal Law Section 204-dd.

Comment 2. Brighton Professional Firefighters Association, Local 2223
PO Box 18083 Rochester, NY 14618
International Association of Fire Fighters, AFL-CIO, CLC
New York State Professional Firefighters Association

Summary: The Brighton Professional Firefighters Association comments that at emergency incidents in their fire district, civil servant officer firefighters are required to relinquish control of the fire scene to volunteer officers who out rank them but have less training, which jeopardizes the health and safety of the public and firefighters. The Association recommends Firefighter II and Fire Officer III be the minimum level of training for fire chiefs in departments subject to General Municipal Law 204-dd and the best practices should include a requirement that ICS command not be transferred from an officer with higher level of training to an officer with a lower level of training. Lastly, the Association comments on the lack

of enforcement of these regulations.

Comment 3. New York State Professional Fire Fighters Association, Inc. (NYSPFFA)
174 Washington Avenue
Albany, New York 12210

Summary: NYSPFFA comments that fire departments should have fire chiefs that are adequately trained and prepared for fire and other catastrophic events. The Recommended best practices for incident commanders contains language that chiefs, officers and firefighters designated to perform the duties of incident commander must receive training superior than that of the general membership of the fire department. NYSPFFA comments that the key focus of the proposed regulations should be to ensure that fire chiefs and incident commanders are trained to a level at or exceeding the training of firefighters they are in command of. Fire Officer I, National Certification for Fire Officer I and First Line Supervisor Training Program should be required as core competencies for fire chiefs in combination departments and OFPC should consider additional periodic and recurring training for fire chiefs.

Response to the comments:

General Municipal Law § 204-dd requires individuals appointed or elected as fire chief (career or volunteer) of a fire department with six (6) or more paid (civil service) firefighters to meet the requirements established by the most recently developed recommended best practices for incident commanders adopted by the Office of Fire Prevention and Control (OFPC). Fire chiefs who are subject to the civil service law must also meet the requirement contained in Civil Service Law section 58-a. Candidates must also meet any other applicable State or local training requirements.

The Recommended Best Practices for Fire Department Training Programs is based on the foundational training requirements contained in the Occupation Safety and Health Administration (OSHA) rules (29 C.F.R. 1910.134), wherein all firefighters must be trained commensurate to the duties and functions they are expected to perform, and leaders and training instructors must be trained at a higher level than the general membership of the fire department. In addition, the Best Practices for Incident Commander is based on the job performance requirements of the National Fire Protection Association (NFPA) 1021, for the Fire Officer level 1.

The Authority Having Jurisdiction is responsible to ensure that the individual appointed or elected as fire chief meets the minimum qualifications, in addition to other State and local requirements.

The regulations implement to the requirements contained in law and cannot impose additional training requirements not authorized by law. Notwithstanding, the core competencies for incident commander will be updated as additional training and qualifications are deemed necessary for the safety of the fire service and the public.

OFPC will post the minimum requirements for career and combination fire chiefs on its website. As required by the GML, OFPC will requires all fire chiefs with six (6) or more paid (civil service) firefighters to meet the incident commander core competencies, contained in the current Recommended Best Practices for Fire Department Training Programs found at:

<http://www.dhSES.ny.gov/ofpc/training/documents/training-best-practices.pdf>.

As the law recognizes the fire chief as is the individual in charge of the fire department and fire scene, these regulations do not address the implementation of the incident command system.

Based on the forgoing, the proposed rules did not require changes to be made.

Incorporation by Reference Certification (required for each book filed with Department of State)

1. I, the undersigned General Counsel for the New York State Division of Homeland Security and Emergency Services hereby state that said agency has adopted the following material: (Agency Name)

Publication Title: National Fire Protection Association Standard 1021 for Fire Officer Professional Qualifications

Volume Number: 2014 Edition

Volume Title: Standard for Fire Officer Professional Qualifications

Section or Pages: n/a

Author: National Fire Protection Association (NFPA)

Publication Date: 2014

Publisher's Name/Address: National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169

Electronic location or other source identification: <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1021>

2. The attached material is referenced in: Title 19

NYCRR, sections 426.9(h)

3. Based on the following facts, it is my opinion that the referenced publication is reasonably available to regulated parties as required by Executive Law §102(1)(c):

The referenced publication is reasonable available to regulated parties as it is readily available on-line free to the public at the above referenced electronic location.

4. Based on the following facts, it is my opinion that reproduction and distribution of all or part of the referenced material will not violate any copyright:

Permission to distribute up to ten (10) printed copies of the standard has been obtained from the National Fire Protection Association. In addition, the reference to Standard 1021 is already contained in New York State Regulation 19 NYCRR 438.3.

5. ☐ The original publication is being submitted to the Department of State.

- ☒ A paper reproduction of the referenced material is being submitted to the Department of State and I, the undersigned General Counsel, hereby certify that I have personally supervised the comparison of the attached document with the original publication and the attached is a true and accurate representation of the publication.

General Counsel's Signature: **X** 

Name: Elisha Tomko

Title: General Counsel

Agency: Division of Homeland Security and Emergency Services

Date: May 3, 2021